

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
ESSEX COUNTY  
DOCKET NO. L-4996-16  
A.D.# \_\_\_\_\_

MATTHEW SWAIN, )  
 )  
Plaintiff, )  
 ) TRANSCRIPT  
vs. ) OF  
 ) MOTION TO DISMISS  
HERMES OF PARIS, )  
 )  
Defendant. )

Place: Essex County Courthouse  
470 Dr. Martin Luther King  
Jr. Boulevard  
Newark, New Jersey 07102

Date: November 18, 2016

BEFORE:

HONORABLE FRANCINE A. SCHOTT, J.S.C.

TRANSCRIPT ORDERED BY:

EDNA D. GUERRASIO, ESQ. (Proskauer Rose LLP)

APPEARANCES:

CHRISTOPHER W. HAGER, ESQ.  
(Niedweske Barber Hager)  
Attorney for the Plaintiff

LAWRENCE R. SANDAK, ESQ.  
EDNA D. GUERRASIO, ESQ.  
(Proskauer Rose LLP)  
Attorneys for the Defendant

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I N D E X

<u>PROCEEDING</u>	<u>PAGE</u>
Motion to Dismiss	3

1 THE COURT: Can I have the parties in SWAIN  
2 V. HERMES.

3 MR. HAGER: Good morning, Your Honor.

4 MR. SANDAK: Good morning, Your Honor.

5 MS. GUERRASIO: Good morning, Your Honor.

6 THE COURT: Good morning. All right,  
7 Counsel. Let's have your appearances.

8 MR. HAGER: Good morning. On behalf of  
9 plaintiff, Matthew Swain, Chris Hager, law firm  
10 Niedweske Barber Hager.

11 MR. SANDAK: Lawrence Sandak and Edna  
12 Guerrasio, Proskauer Rose, for Hermes of Paris and  
13 Lorenzo Battista.

14 THE COURT: All right. So do I understand  
15 properly that the federal court Judge ordered the  
16 plaintiff to take this matter to arbitration?

17 MR. SANDAK: Yes, Your Honor.

18 THE COURT: Yes?

19 MR. HAGER: Well, what the federal court  
20 ordered was their petition for arbitration on behalf of  
21 Hermes only was granted.

22 THE COURT: We'll dance on the head of a pin  
23 later.

24 MR. HAGER: Okay.

25 THE COURT: I need to know now --

1                   MR. HAGER: She granted their motion to  
2 compel arbitration.

3                   THE COURT: And that -- so she said, she  
4 didn't have the authority to, you know, take this New  
5 Jersey action and ship it off somewhere.

6                   MR. HAGER: That's right.

7                   THE COURT: But she compelled the plaintiff  
8 to take this complaint to arbitration.

9                   MR. HAGER: That's right.

10                  THE COURT: Okay. So I, as a lowly state  
11 court Judge --

12                  MR. HAGER: Disagree.

13                  THE COURT: -- sitting here in Newark, New  
14 Jersey, why would I go in the face of a federal Judge  
15 that told you to get yourself to arbitration?

16                  MR. HAGER: Sure. Well, for the exact reason  
17 that she said in her opinion that she couldn't touch  
18 this state LAD case, number one. She had no --

19                  THE COURT: No. But, I mean, why -- your  
20 client -- oh, gosh, I don't want to add fuel to this  
21 fire, but --

22                  MR. HAGER: Sure. Sure.

23                  THE COURT: -- isn't your client in contempt  
24 for not doing what she told him he had to do?

25                  MR. HAGER: No. There's no arbitration going

1 on right now, Your Honor.

2 THE COURT: No. I know. She told him -- she  
3 told him if he wanted to pursue these claims, he had to  
4 take them to arbitration and he has not done that.

5 MR. HAGER: No. Respect-- no. Respectfully,  
6 Your Honor, -- and I'm not trying to be difficult, that  
7 was the worst kangaroo court appearance I have ever had  
8 in my career. We were only in chambers. There's no  
9 claims analysis. There's no --

10 THE COURT: They are the high and holy  
11 federal bench.

12 MR. HAGER: I get it and that's why we went -  
13 - we went --

14 THE COURT: All hail.

15 MR. HAGER: We're at the Second Circuit right  
16 now. So there -- if anything, this arbitration order  
17 is frozen in place and that was why, in part, they were  
18 coming here --

19 THE COURT: Okay. Now, let me ask you, if  
20 the Second Circuit affirms that order, you agree,  
21 you're kind of done.

22 MR. HAGER: I'm in trouble. I'm in trouble.

23 THE COURT: You're done. You can't come here  
24 and proceed against Hermes and have a jury and all the  
25 rest of it because the federal court has told you, you

1 have to go to arbitration.

2 MR. HAGER: Against Hermes.

3 THE COURT: Well, we'll get to that. But you  
4 would agree against Hermes, if the Second Circuit  
5 affirms a District Court and I wasn't there and I don't  
6 know but I know this much.

7 MR. HAGER: Sure.

8 THE COURT: It is not for me as the state  
9 court Judge to pass judgment on what a federal Judge  
10 did.

11 MR. HAGER: I respect that.

12 THE COURT: And, you know, I know you say  
13 it's kangaroo court. I'm sure he's going to say  
14 something different. I've seen lawyers make stuff up  
15 about what happened in court or sometimes it's not even  
16 made up. Sometimes, they're just like the vision is so  
17 clouded, the reality doesn't come through. But it  
18 doesn't matter. It's not for me. You agree, it's not  
19 for me to review that Judge's decision?

20 MR. HAGER: I do. I absolutely do. I know  
21 your hands are tied on that not as to the aiding and  
22 abetting individual liability claim and --

23 THE COURT: Well, I'm one of those Judges who  
24 is a little stingy. See, I'm not going to go down that  
25 road just yet.

1 MR. HAGER: Okay.

2 THE COURT: Because what I want to know from  
3 you guys, I mean, I know, everybody is like, your  
4 emotions are up and everybody wants to win. I think  
5 I'm going to send you all home a little half pregnant,  
6 if you get my drift. Why don't I just dismiss this  
7 without prejudice and put in the order, it's without  
8 prejudice to the plaintiff moving to reinstate or the  
9 defendant moving to dismiss with prejudice after the  
10 Second Circuit rules?

11 MR. HAGER: I can't dispute that, Your Honor.

12 MR. SANDAK: Well, then this is very easy  
13 because neither can we.

14 THE COURT: Go. Have a great weekend. Bill  
15 another client. We'll send the order out.

16 MR. SANDAK: Thank you very much, Your Honor.

17 THE COURT: Look at that, you're all ready.  
18 Okay. Great job on the briefs, by the way.

19 MR. SANDAK: Thank you very much.

20 THE COURT: Sorry I didn't give you a chance  
21 to really go at it.

22 MR. HAGER: No.

23 THE COURT: But it seems to me, I mean, you  
24 filed the appeal in the Second Circuit, right?

25 MR. HAGER: Yes.

1           THE COURT: So if they say, no, he's  
2 absolutely right, you had to go to arbitration, well,  
3 that's one issue and that is whether or not the  
4 individual -- whether or not -- well, you still have to  
5 go to arbitration. The issue would be then -- because  
6 you can't overrule the federal Judge. If they say,  
7 you've got to go, you've got to go. And then the  
8 question is, under what legal scenario would you be  
9 able to proceed against the supervisor, if any, and if,  
10 in fact, that had to go to arbitration was well.

11           MR. HAGER: I agree. I agree.

12           THE COURT: Have fun. Bill another client.

13           MR. SANDAK: Well, Judge, for the record, I  
14 don't want to cloud anything but our position is that  
15 Judge McMahon very clearly ordered that the arbitration  
16 proceed against both parties.

17           THE COURT: Well, and you know what, first,  
18 let's see what the Second Circuit says, so we get it  
19 out of the way.

20           MR. HAGER: That's right. That's right.

21           MR. SANDAK: Agreed.

22           THE COURT: All of this, you know, who did  
23 what to who.

24           MR. HAGER: Have a great weekend.

25           THE COURT: Go have coffee. Have a great



1 Thanksgiving and we'll send the order out.

2 MR. HAGER: Thank you, Judge. You, too.

3 THE COURT: Thank you.

4 (Proceedings concluded)

5 CERTIFICATION

6

7 I, SHERRY M. BACHMANN, the assigned transcriber, do  
8 hereby certify the foregoing transcript of  
9 proceedings, time from 9:29 a.m. to 9:34 a.m.<sup>43</sup>, is  
10 prepared in full compliance with the current  
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12 true and accurate non-compressed transcript of the  
13 proceedings as recorded.

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16 *Sherry Bachmann*

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18 SHERRY M. BACHMANN AOC #454  
19 G&L TRANSCRIPTION OF NJ

Date: March 13, 2018

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